

REMARKS

Applicant mailed in a second preliminary amendment on April 29, 2005 which crossed in the mail with the Examiner's Action mailed on May 5, 2005. Applicant is now amending the claims assuming the amendments in the second preliminary amendment are now of record.

Applicant had amended claims 2 and 9, found allowable in the Examiners action, to state the feature of "gummed labels" in a slightly broader form as --hair restraining elements--. This feature has now been incorporated into claims 1 and 9. The gummed labels are set forth in claims 20 and 21.

The Examiner's rejection of claims 16-19 under 35 USC § 102 for being anticipated by the Nissimov US Patent No. 5,327,656 as this rejection may be attempted to be applied against amended claims 16-19, is respectfully traversed.

In support of this traverse it is to be noted that Nissimov does not prepare a *pre-measured* site on scalp. Nissimov takes a group (bundle) of hairs from a *pre-determined* site on the scalp. He is concerned with *where* on the scalp the sample is taken. The *size* of the scalp area is not a consideration. Nissimov is simply a method by which the average diameter of that hair group (bundle) may be determined. Nissimov aligns the hairs in a single column and measures the height of the column. The column height is the total of all the diameters; it is not the cross-sectional area of all the hairs as taught in the subject application.

Applicant aligns a bundle of hairs in a rectangular space with perpendicular sides. Nissimov aligns single hairs in a triangular space, with the largest hair at the base and the smallest at the top. Because the chamber does not have perpendicular sides the measurement of the square cross sectional area is not registered on the gage. To calculate the average diameter of the hairs in the bundle, Nissimov must manually count the number of hairs in the column and divide that number into the value of the cumulative diameters.

Nissimov, by calculating the average hair diameter in a pre-determined site on the scalp, will detect and quantify "thinning" but Nissimov will not detect or quantify the presence of "shedding." Both thinning and shedding are essential elements of hair loss, and applicant detects and quantifies them both simultaneously.

With respect to Nissimov col 6 and 7, Nissimov does not claim that the hair is uncut. It would appear that the hair is cut because Nissimov suggests the hairs be counted with the aid of a stereo-microscope.

Nissimov discloses a spring 5 that appears to be used to press a part 5 against a piston 9 to align in single file a group of hairs laterally from both sides of a column, thus keeping them lined up. In order to press the hairs, one against the other and measure the height of the stack, thus their cumulative diameters, the micrometer anvil is applied to one end of the stack. It would not be necessary or logical to use a spring of the illustrated size to compress 15-20 single hairs one against the other. So although, a spring is present, it is not intended or used to close the dead space between the hairs. The anvil of the micrometer is used for that purpose, and given the tiny sample of single hairs and the absolutely minimal force required to do so, no spring opposing the advancing micrometer anvil would be required.

In Nissimov, a precise amount of force is reached when the bundle bends. If one is not observing the bundle bending, or does not identify the exact moment of bending, the compressive force applied by the micrometer anvil easily can be exceeded.

In applicant's method and device, the precise amount of compressive force is reached when a collar moves the distance of 1cm, and stops, thus compressing a larger internal spring 1cm. This distance cannot be exceeded and is mechanically limited by the design of applicant's device so that the same (precise, predetermined amount of) pressure is applied by applicant's spring 62, anvil 68 and plunger 42 to a bundle of uncut hair in the slot 56 each time a bundle of uncut hair is placed in the slot 56 (Specification, page 8 paragraphs 6 and 7). No estimate, observation, or judgment is required. The endpoint is precise and controlled by the device's design, not the operator's finger manipulation (Nessler) or his/her visual observance of hair movement (Nissimov).

In Nissimov, the column of hair is compressed to its endpoint when the hair bends, but it may be compressed further. The hair's bending may be used as an end point because only a column of *single* hairs, and not a larger group of hairs, as in applicant's method and apparatus, will easily be seen to bend.

In applicant's method and apparatus, the column (bundle) of hair is fully compressed when the endpoint of the collar's movement rests on the body of the

device. It may not be compressed further. The endpoint of hair bending cannot be used by applicant, by virtue of applicant's use of a much larger sample of hair. The large sample is required because all the hairs within a pre-measured area of scalp are collected uncut and the bundle measured. Again it must be emphasized that Nissimov does not collect uncut hairs from a pre-measured area of scalp.

Applicant's method and device are intended to measure the ratio or relativity of hair cross sectional area to scalp surface cross-section area. Nissimov does not. Applicant must measure a bundle of hair significantly larger than the bundle in Nissimov. Because the bundle of hair is so much greater in size and mass, the compressive endpoint is and must be uniquely different from that of Nissimov.

Note that claim 16 has been amended to call for a generally rectangular slot in a body, an anvil that is received in the slot and a compression spring that acts on the body or the anvil and that is mechanically limited to place no more than a predetermined compressive force on a bundle of hair received in the slot. Such structure is not disclosed in or suggested by Nissimov.

The Nissimov spring 5 is limited in its action against part 6 by a stop 7, which thereby limits the force of part 6 against piston 9. Anyway there is no structure in Nissimov corresponding to applicant's generally rectangular slot in a body.

The Nissimov spring 5 is used to gently press the hairs side to side to hold them upright as a column in his prism/triangular chamber. The spring 5 serves an entirely different purpose than applicant's compression spring.

The Examiner's rejection of claim 7 under 35 USC §103 for being unpatentable over the Nessler US Patent No. 1,962,357 or the Nissimov US Patent No. 5,327,656, as these rejection may be attempted to be applied to new claims 24 and 25, are respectfully traversed.

First of all in support of this traverse, neither Nessler or Nissimov teach applying a precise predetermined amount of compressive force on a bundle of uncut hair in a slot or providing a compression spring for applying such a precise predetermined amount of compressive force.

Nessler does not teach advancing an anvil toward a slot or the slot bottom toward the anvil with a mechanical mechanism, namely a knob and threaded shaft.

Nessler relies on the passive weight of a presser (anvil) 10 to compress a bundle of hair. The passive weight is, unfortunately insufficient to compress the bundle of hair and the device must be held in an upright position so that the presser (anvil), under the force of gravity, can act on the bundle of hair. If additional compressive force is desired, one's hand must be used to squeeze the presser (anvil) 10 into a slot 7. Such additional hand force is neither predetermined or limited to a maximum force.

Applicant teaches a device in which the mechanical advancement of a slot bottom toward an anvil is achieved with a mechanical structure, namely a knob on a threaded shaft. As a result, applicant can apply a mechanically advantaged compression with applicant's device held in any position and not just in an upright position.

In Nessler's device, if the hand compression is released or loosened, Nessler's presser (anvil) 10 will be pushed upward and away from the bundle of hair as a result of the hair bundles resiliency and the presser 10 will disengage. Applicant's device, because of the mechanical structure for compression, is self braking, and will not loosen it's compression or dis-engage if the operator lets go of the knob.

Unlike Nessler, applicant's device provides a smooth, continuous, incremental, self-braking application of compression that is precise, predetermined and limited to a maximum because of the design of the device. Also, unlike Nessler, applicant's device frees the hand from the trauma of forcefull application of pressure.

Again, Nessler only teaches providing a 12 gram presser 10 in a slot 7 and first squeezing the presser 10 into the slot 7 by hand. Nissimov only teaches a spring 5 for pressing an ODMOGH piston 9 to an inner wall of an instrument cylinder. Nissimov does not teach a compression spring for applying a precise predetermined amount of pressure to an uncut bundle of hair between an anvil and a bottom of a slot and then measuring the total amount of compression.

Furthermore, neither Nessler or Nissimov teach a slot having a width of precisely 1mm so that the height of the bundle of hair in the slot can be read directly in square millimeters. It is only applicant who teaches this simple construction of the slot to obtain a direct read in square millimeters.

The Examiner's contention that such choice of dimension of the slot is obvious is unfounded. See *Ex parte Leavell*, 212 USPQ 763 where Mr. Williamowsky, speaking for the Patent and Trademark Board of Appeals stated:

"The legal conclusion of obviousness must be bottomed on a solid evidentiary base."

The Examiner has not provided any evidence of obviousness.

Further see *Ex parte Dere*, 118 USPQ 541, where Examiner in Chief Bailey stated:

"...the art contains no suggestion of having marked zones of perforation on opposing edges spaced according to the metric on English system respectively. The Examiner, as to this relationship, which is the very thing that yields the useful results already pointed out merely states it:

'is not seen to provide a patentable distinction, being no more than a matter of choice.'

"Why he so holds he does not say and we do not see particularly since only the disclosure of the instant case makes a 'choice' available."

See also *In re Bezombes, Peyches and Tisser*, 164 USPQ 387 (CCPA 1970), where the CCPA found that a claim limitation that the support of molten metal "is not larger than the glass sheet", was not "an obvious matter of choice" in the absence of some reason why a person skilled in the art would find it obvious to depart from the flotation support of Hitchcock.

The indication of allowable subject matter in original claims 2, 9 and 10-15 is noted.

New claims 25-27 are claims of varying scope which applicant believes are distinguished over the prior art of record for the reasons set forth above.

In summary, applicant submits that the method and device as defined in the amended and new claims are not disclosed or suggested by the references cited by the Examiner, that the amended claims are clear of the art and that the application is otherwise in condition for allowance. An early and favorable action to that end is requested.

Respectfully submitted,

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